

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARLEN ARROYO,

Petitioner,

vs.

CAPTAIN CARL CARTER,

Respondent.

CASE NO. CV 08-04637 GAF (RZ)

JUDGMENT

This matter came before the Court on the Petition of CARLEN ARROYO for a writ of habeas corpus. Having reviewed the Petition and supporting papers, and having accepted the Report and Recommendation of the United States Magistrate Judge,

IT IS ORDERED AND ADJUDGED that (a) the Petition for Writ of Habeas Corpus is granted solely as to Claim 1 and denied otherwise; (b) this matter is remanded to the state trial court for the resentencing of Petitioner in a manner consistent with the Report And Recommendation; and (3) Petitioner shall be released from custody to the extent that he is confined solely on the basis of the gang enhancement conviction targeted in Claim 1, *if and only if*, within 120 days of the conclusion of this case, including appeal,

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1 the State does not resentence Petitioner in a manner consistent with the Report And
2 Recommendation.

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4 DATED: January 12, 2010

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GARY A. FEESS
UNITED STATES DISTRICT JUDGE